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9 Attorneys for Defendants SuperShuttle
10 International, Inc.; SuperShuttle Franchise
11 Corporation, and Veolia Transportation
12 Services, Inc.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DISTRICT

16 ROOSEVELT KAIRY, LARRY BROWN,
17 WAYNE DICKSON, AND DRAKE OSMUN,
18 on behalf of themselves, all other similarly
19 situated, and the general public,,
20

21 Plaintiffs,

22 vs.

23 SUPERSHUTTLE INTERNATIONAL, INC.;
24 SUPERSHUTTLE FRANCHISE
25 CORPORATION, AND VEOLIA
26 TRANSPORTATION SERVICES, INC., dba
27 SUPERSHUTTLE, AND DOES 1 through 20,
28 inclusive,

Defendants.

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

PLEASE TAKE NOTICE THAT defendant SuperShuttle International, Inc. hereby
removes to this Court the state-court action described below.

ORIGINAL

E-filing

FILED

JUN 17 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

Case No.:

C08-02993 MEJ

NOTICE OF REMOVAL OF
DEFENDANT SUPERSHUTTLE
INTERNATIONAL, INC.

[Filed Concurrently with Declaration of
Judy Roberson in Support of Removal and
Declaration of Andre Y. Bates in Support of
Removal]

GO 44 SEC. N
FILE BY FAX NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE SENT

1 1. On May 8, 2008 an action was commenced in the Superior Court of California in
2 and for the County of Alameda, entitled Roosevelt Kairy, Larry Brown, Wayne Dickson, And
3 Drake Osmun v. SuperShuttle International, Inc., SuperShuttle Franchise Corporation and Veolia
4 Transportation Services, Inc., dba Supershuttle, case number RG08386463. A true and correct
5 copy of the Summons and Complaint ("Complaint") filed on May 8, 2008 is attached hereto as
6 Exhibit A. SuperShuttle International, SuperShuttle Franchise and Veolia Transportation Services
7 filed their Answer to Plaintiffs' Complaint on June 17, 2008. A true and correct copy of the
8 Answer of SuperShuttle International and SuperShuttle Franchise is attached hereto as Exhibit B.
9 A true and correct copy of the Answer of Veolia Transportation Services is attached hereto as
10 Exhibit C. All other documents served on Defendants are attached as Exhibit D.

11
12 2. SuperShuttle International, SuperShuttle Franchise and Veolia Transportation
13 Services were served with the Summons and Complaint in this matter on May 19, 2008. This
14 Notice of Removal is being filed within 30 days of service and therefore Notice of Removal is
15 timely filed pursuant to 28 U.S.C. §1446(b) and 28 U.S.C. §1453(b).

16
17 3. This action is a civil action over which this Court has original jurisdiction under 28
18 U.S.C. § 1332(d)(2), and is one which may be removed to this Court by defendants pursuant to
19 the provisions of 28 U.S.C. § 1446(b) and 28 U.S.C. §1453(b) in that it is a class action where one
20 plaintiff is diverse from one defendant and the amount in controversy exceeds the sum of
21 \$5,000,000.

22
23 **Diversity of Citizenship**

24 4. The Complaint alleges that Plaintiffs are residents of Alameda, Contra Costa,
25 Sacramento and Los Angeles counties in the State of California. (See Complaint ¶¶ 6-9).

26 5. SuperShuttle International is a Delaware corporation, incorporated under the laws
27

1 of the State of Delaware. (See Complaint ¶ 10). Its corporate headquarters and principal place of
 2 business is located in Scottsdale, Arizona. (Declaration of Judy Robertson in Support of Notice of
 3 Removal, filed concurrently herewith, ¶ 2). Therefore, SuperShuttle International is a citizen of
 4 the States of Delaware and Arizona for diversity of citizenship purposes. 28 U.S.C. §1332(c).

5 6. Accordingly, there is diversity of citizenship between one plaintiff and one
 6 defendant pursuant to 28 U.S.C. §1332(d)(2).

7
 8 **Jurisdictional Amount**

9 7. Plaintiffs' allegations in the Complaint satisfy the jurisdictional amount in
 10 controversy requirement of \$5,000,000. Plaintiffs' alleged statutory damages based on the
 11 allegations in the complaint for the Second and Seventh causes of action total between \$8,108,750
 12 and \$8,366,400, which does not take into consideration any of the other damages sought by
 13 Plaintiffs in their eight remaining causes of action. (Declaration of Andre Y. Bates in Support of
 14 Notice of Removal, filed concurrently herewith, ¶ 7).

15
 16 **Intradistrict Venue**

17 8. Intradistrict venue is appropriate in the Oakland Division of this Court because this
 18 action is removed from the Superior Court of the State of California in and for the County of
 19 Alameda.

20 Dated: June 17, 2008

MARRON & ASSOCIATES

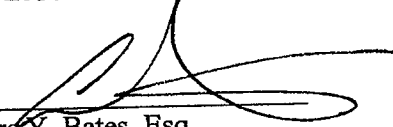
21
 22 By: 
 23 Andre Y. Bates, Esq.
 24 Attorneys for Defendants SuperShuttle
 25 International, Inc., SuperShuttle Franchise
 26 Corporation, and Veolia Transportation
 27 Services, Inc.

EXHIBIT A

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):
SUPERSHUTTLE INTERNATIONAL, INC.; SUPERSHUTTLE
FRANCHISE CORPORATION and VEOLIA TRANSPORTATION
SERVICES, INC., d.b.a. SUPERSHUTTLE,
and

DOES 1-20, inclusive
YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
ROOSEVELT KAIRY, LARRY BROWN, WAYNE DICKSON, and DRAKE
OSMUN, on behalf of themselves, all others similarly
situated, and the general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY - 8 2008

CLERK OF THE SUPERIOR COURT
By Alphonsine Oates, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es).

Alameda County Superior Court
1225 Fallon Street

Oakland, California 94612

CASE NUMBER:
(Número del Caso)

RG08386463

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

AARON KAUFMANN 148580/DAVID POGREL 203787

925.932.6006

925.932.3412

HINTON ALFERT & SUMNER

1646 N. CALIFORNIA BLVD. SUITE 600, WALNUT CREEK, CALIFORNIA 94596

ADDITIONAL COUNSEL LISTED ON ATTACHED PAGE

DATE: MAY - 8 2008

(Fecha)

PAT S. SWEETEN

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Supershuttle International, Inc.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

PETITIONER/PLAINTIFF. ROOSEVELT KAIRY, LARRY BROWN, WAYNE DICK RESPONDENT/DEFENDANT.	CASE NUMBER
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Attorneys for PLAINTIFFS
Additional Counsel Listed on Next Page

ENDORSED
FILED
ALAMEDA COUNTY

MAY - 8 2008

CLERK OF THE SUPERIOR COURT
By Alphonsine Oates, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ROOSEVELT KAIRY, LARRY BROWN,
WAYNE DICKSON, and DRAKE OSMUN,
on behalf of themselves, all others similarly
situated, and the general public,

Plaintiffs,

v.

SUPERSHUTTLE INTERNATIONAL, INC.;
SUPERSHUTTLE FRANCHISE
CORPORATION and VEOLIA
TRANSPORTATION SERVICES, INC., d.b.a.
SUPERSHUTTLE, and DOES 1 through 20,
inclusive,

Defendants.

CLASS ACTION

Case No. **RG08386463**

COMPLAINT

- (1) REIMBURSEMENT OF BUSINESS EXPENSES (Labor Code §2802);
- (2) UNLAWFUL DEDUCTIONS FROM WAGES (Labor Code §§221, 223, 400-410);
- (3) COERCED PURCHASES (Labor Code §450);
- (4) FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§226.7, 512);
- (5) FAILURE TO PAY MINIMUM WAGE (Labor Code §§1182.11, 1194, 1197);
- (6) FAILURE TO PAY OVERTIME COMPENSATION (Labor Code §§510, 1194);
- (7) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §§226, 226.3);
- (8) FAILURE TO KEEP ACCURATE PAYROLL RECORDS (Labor Code §§1174, 1174.5);
- (9) WAITING TIME PENALTIES (Labor Code §201-203); and
- (10) VIOLATIONS OF UCL (Business and Professions Code §17200 *et seq.*)

CLASS ACTION COMPLAINT

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1 1. PLAINTIFFS Roosevelt Kairy, Larry Brown, Wayne Dickson, and Drake Osmun
2 allege as follows on behalf of themselves and all others similarly situated:

3 **I. INTRODUCTION**

4 2. This is an action for relief from defendants' unlawful misclassification of its
5 California shuttle drivers as "franchisees" and "independent contractors." SUPERSHUTTLE
6 INTERNATIONAL, INC., SUPERSHUTTLE FRANCHISE CORPORATION and VEOLIA
7 TRANSPORTATION SERVICES, INC., dba "SuperShuttle" and their affiliates (collectively
8 "SUPERSHUTTLE" or "DEFENDANTS") are in the airport and charter transport business, and
9 employ PLAINTIFFS and similarly situated drivers for the pick up and drop off of passengers and
10 their possessions. DEFENDANTS exercise pervasive control over their transport operations,
11 including over PLAINTIFFS and similarly situated drivers, such that the drivers operating in
12 California are in fact DEFENDANTS' employees under California law.

13 3. By misclassifying their drivers as independent contractors and/or franchisees,
14 DEFENDANTS have sought to avoid various duties and obligations owed to employees under
15 California's Labor Code and the Industrial Welfare Commission ("IWC") wage orders, including:
16 the duty to indemnify employees for all necessary expenses and losses incurred in connection with
17 their employment (Cal. Labor Code §2802; IWC wage order No. 9, §§ 8-9); the duty to provide
18 off-duty meal periods (Cal. Labor Code §§ 512, 226.7; IWC wage order No. 9, § 11); the duty to
19 avoid deductions from wages (Cal. Labor Code §§ 221, 223, 400 et seq., IWC wage order No. 9, §
20 8); the duty to avoid coercion in purchase of necessary equipment, materials, and services (Cal.
21 Labor Code § 450); the duties to pay minimum wage, overtime premium pay, and to document
22 their actual hours worked (Cal. Labor Code §§ 226, 510, 512, 1174, 1182.11, 1194, 1197; IWC
23 wage order No. 9, §§ 3, 4, 7, Minimum Wage Order); and other legal obligations.

24 4. PLAINTIFFS Kairy, Brown, Dickson, and Osmun bring claims individually and as
25 a class action, under Cal. Code of Civil Procedure § 382, on behalf of similarly situated airport
26 shuttle drivers working from DEFENDANTS' California facilities (collectively hereinafter
27 "Drivers" or "Class Members"). PLAINTIFFS challenge DEFENDANTS' policy of willfully and
28 unlawfully misclassifying its Drivers as "independent contractors" and/or "franchisees" and

1 thereby refusing to indemnify them for employment-related expenses and losses, taking wrongful
 2 deductions from their wages, coercing them to purchase necessary services and items, failing to
 3 provide off-duty meal periods, failing to pay minimum wage and overtime compensation, and
 4 failing to document actual hours worked as required by California law. This misclassification
 5 policy has been in effect for at least four years prior to the filing of this action.

6 5. PLAINTIFFS Kairy, Brown, Dickson, and Osmun, on behalf of themselves and
 7 other current and former Drivers, bring claims for reimbursement of business expenses and losses,
 8 reimbursement of deductions wrongfully taken from wages, meal period pay, unpaid minimum
 9 wage and overtime compensation, statutory penalties, interest, and attorneys' fees and costs, under
 10 Cal. Labor Code §§ 203, 218.5, 226.7, 1194, and 2802, and Code of Civil Procedure § 1021.5.
 11 PLAINTIFFS also seek relief on behalf of the Class and in a representative capacity, pursuant to
 12 Cal. Business and Professions Code §§ 17200-17208 (also referred to herein as the "UCL"),
 13 including injunctive relief, restitution, and disgorgement of all benefits DEFENDANTS have
 14 enjoyed from the unlawful practices referenced above and detailed below. These class and
 15 representative action claims are brought on behalf of PLAINTIFFS and all current and former
 16 similarly situated Drivers employed by DEFENDANTS during the period commencing four years
 17 prior to the filing of this action (the "Class Period").

18 II. PARTIES

19 A. Plaintiffs

20 6. Plaintiff Roosevelt Kairy resides in Oakland, California (Alameda County). He has
 21 been a driver for SUPERSHUTTLE from approximately May 1997 to the present. Throughout his
 22 tenure as a SUPERSHUTTLE driver he has been based out of DEFENDANTS' facilities in
 23 Burlingame, California (San Mateo County), performing services for DEFENDANTS throughout
 24 the San Francisco Bay Area, including in Alameda County.

25 7. Plaintiff Larry Brown resides in Los Angeles, California (Los Angeles County). He
 26 drove for SUPERSHUTTLE from approximately July 1995 until approximately June 19, 2005.
 27 Throughout his tenure as a SUPERSHUTTLE driver he was based out of DEFENDANTS'

1 facilities in Los Angeles, California (Los Angeles County), performing services for
 2 DEFENDANTS throughout DEFENDANTS' Los Angeles region.

3 8. Plaintiff Wayne Dickson resides in Sacramento, California (Sacramento County).
 4 He drove for SUPERSHUTTLE from approximately 2004 until August 2007. Throughout his
 5 tenure as a SUPERSHUTTLE driver he was based out of DEFENDANTS' facilities in
 6 Sacramento, California (Sacramento County), performing services for DEFENDANTS throughout
 7 DEFENDANTS' Sacramento region.

8 9. Plaintiff Drake Osmun resides in Concord, California (Contra Costa County). He
 9 has been a driver for SUPERSHUTTLE from approximately 1988 to 1990 and February 2001 to
 10 the present. Throughout his tenure as a SUPERSHUTTLE driver he has been based out of
 11 DEFENDANTS' facilities in Burlingame, California (San Mateo County), performing services for
 12 DEFENDANTS throughout the San Francisco Bay Area, including in Alameda County.

13 **B. DEFENDANTS**

14 10. Defendant SuperShuttle International, Inc. ("SSI") is incorporated under the laws of
 15 Delaware. According to its website, it is "the nation's leading shared-ride airport shuttle, providing
 16 door-to-door ground transportation to more than 8 million passengers per year." Defendant SSI is
 17 and at all relevant times has been an employer covered by the Cal. Labor Code and IWC wage
 18 order No. 9.

19 11. Defendant SuperShuttle Franchise Corporation ("SSFC") is incorporated under the
 20 laws of Delaware. Defendant SSFC is and at all relevant times has been an employer covered by
 21 the Cal. Labor Code and IWC wage order No. 9.

22 12. Defendant Veolia Transportation Services, Inc. ("VEOLIA") is incorporated under
 23 the laws of Maryland. It describes itself as "the largest private transportation provider in the US."
 24 Defendant VEOLIA is and at all relevant times has been an employer covered by the Cal. Labor
 25 Code and IWC wage order No. 9

26 13. The true names and capacities, whether individual, corporate, associate, or
 27 otherwise, of defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
 28 PLAINTIFFS, who therefore sue defendants by such fictitious names under Cal. Code of Civil

1 Procedure § 474. PLAINTIFFS are informed and believe, and based thereon allege, that each of
 2 the defendants designated herein as a DOE is legally responsible in some manner for the unlawful
 3 acts referred to herein. PLAINTIFFS will seek leave of court to amend this Complaint to reflect
 4 the true names and capacities of the defendants designated hereinafter as DOES when such
 5 identities become known. Hereinafter DEFENDANTS and the DOE defendants shall be referred
 6 to collectively as "DEFENDANTS" and/or "SUPERSHUTTLE."

7 14. PLAINTIFFS are informed and believe, and on such information and belief allege,
 8 that each defendant acted in all respects pertinent to this action as the agent of the other defendants,
 9 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
 10 each defendant are legally attributable to the other defendants.

11 **III. JURISDICTION AND VENUE**

12 15. This Court has subject matter jurisdiction because the total amount of damages
 13 sought exceeds \$25,000 and the relief requested is within the jurisdiction of this Court.

14 16. Venue as to DEFENDANTS is proper in the County of Alameda, pursuant to Code
 15 of Civil Procedure § 395.5. DEFENDANTS maintain headquarters or other offices, transact
 16 business, and/or have agents in Alameda County, and DEFENDANTS are otherwise within this
 17 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a
 18 direct effect on PLAINTIFFS and those similarly situated within the State of California and within
 19 Alameda County. DEFENDANTS operate numerous services in Alameda County as well as in
 20 other counties within the State of California and employ numerous Class Members in Alameda
 21 County. Moreover, PLAINTIFFS Roosevelt Kairy and Drake Osmun were employed by
 22 Defendants in Alameda County during the Class Period.

23 **IV. STATEMENT OF FACTS**

24 17. DEFENDANTS operate an airport and charter passenger shuttle service, using an
 25 integrated network of transportation, communication, and dispatch facilities.

26 18. During the Class Period, DEFENDANTS have employed hundreds of Drivers at
 27 facilities located in California, including in or about San Francisco, Los Angeles, Sacramento, San
 28 Diego, and Orange County to timely pick up and drop off passengers based on times, locations, and

1 for amounts determined by DEFENDANTS. The drivers transport passenger to and from most of
2 the major commercial airports in California, including Oakland, SFO, LAX, Sacramento, San
3 Diego, Burbank, Ontario and Orange County. Drivers also transport passengers on charters and
4 certain non-airport runs that are contracted by DEFENDANTS and their customers.

5 19. DEFENDANTS retain and exercise extensive control over the work of the Drivers.
6 Drivers work within DEFENDANTS' designated geographical areas, which typically surround the
7 major airports in California, and are assigned customers and locations for picking up and dropping
8 off passengers each day. DEFENDANTS employ dispatchers, customer service representatives,
9 and other managerial employees at their terminals and dispatch facilities, all of whom have
10 supervisory responsibility over the Drivers, their daily assignments and paperwork. Drivers
11 interact with DEFENDANTS' personnel throughout their workday and are subject to various types
12 of punishment (financial and/or disciplinary) when they do not follow DEFENDANTS' rules and
13 instructions.

14 20. DEFENDANTS also control and limit the compensation paid to Drivers.
15 DEFENDANTS unilaterally set the prices charged to their customers for the services rendered by
16 Drivers, and purport to pay Drivers a percentage of the fees DEFENDANTS charge their
17 customers. Drivers have no control over the rates charged to DEFENDANTS' customers, and
18 Drivers are not permitted to pick up passengers independent of DEFENDANTS' dispatch system
19 without DEFENDANTS' consent. Drivers' remuneration entirely depends on their ability to drive
20 their vehicles and to pick up and drop off DEFENDANTS' customers.

21 21. PLAINTIFFS and similarly situated Drivers have provided services that are an
22 integral part of DEFENDANTS' business enterprise. By providing vehicles with required logos
23 and advertising of DEFENDANTS, by reliably serving DEFENDANTS' customers, by following
24 DEFENDANTS' controlled pick-up and drop-off procedures, by being governed by
25 DEFENDANTS' detailed policies and procedures, and in other material ways, PLAINTIFFS and
26 other Drivers have rendered services to DEFENDANTS that are integral to the DEFENDANTS'
27 passenger transport system.

28 ///

1 22. Despite DEFENDANTS' pervasive control over all aspects of its passenger
2 transport operations, including the Drivers, DEFENDANTS have uniformly classified and treated
3 the Drivers as "independent contractors" or as "franchisees."

4 23. DEFENDANTS' classification and treatment of PLAINTIFFS and similarly situated
5 Drivers as "independent contractors" and/or "franchisees" rather than as "employees" is and during
6 all relevant times has been unlawful.

7 24. As a result of DEFENDANTS misclassifying their Drivers as "independent
8 contractors" and/or "franchisees," they have failed to indemnify the Drivers for employment-
9 related expenses, including the costs of providing their vehicles; all operation costs associated with
10 the vehicle, including fuel, maintenance, repair, cleaning, and licensing; the cost of adorning their
11 vehicles with the specific paint color, SUPERSHUTTLE decals and other required identifying
12 marks; liability and other insurance covering work place injuries; cellular telephone and
13 DEFENDANTS' designated text messaging dispatch system. PLAINTIFFS are informed and on
14 that basis allege that DEFENDANTS have taken deductions from Drivers' compensation to cover
15 many of these employment-related expenses. As a further result of DEFENDANTS misclassifying
16 their Drivers as "independent contractors" and/or "franchisees," DEFENDANTS have taken
17 unlawful deductions from Drivers' compensation for items including but not limited to insurance,
18 dispatch fees, PUCTRA business operating fees, franchise fees, and equipment and uniform fees.

19 25. As a result of DEFENDANTS misclassifying their Drivers as "independent
20 contractors" and/or "franchisees," DEFENDANTS have regularly failed to provide a 30 minute
21 off-duty meal period to PLAINTIFFS and similarly situated Drivers who worked more than five
22 hours in a day.

23 26. As a result of DEFENDANTS misclassifying their Drivers as "independent
24 contractors" and/or "franchisees," DEFENDANTS have regularly failed to provide a second 30
25 minute meal period to PLAINTIFFS and similarly situated Drivers who worked more than 10
26 hours in a day.

27 ///

28 ///

1 27. As a result of DEFENDANTS misclassifying their Drivers as "independent
2 contractors" and/or "franchisees," DEFENDANTS have failed to pay minimum wage
3 compensation to PLAINTIFFS and similarly situated Drivers for all hours worked.

4 28. DEFENDANTS have required and/or knowingly permitted PLAINTIFFS and
5 similarly situated Drivers to work hours considerably in excess of eight hours per day and/or 40
6 hours per week. PLAINTIFFS are informed and believe and on such information and belief allege
7 that it has been DEFENDANTS' policy and practice to require and/or knowingly permit their
8 Drivers to work overtime hours without receiving overtime compensation.

9 29. As a result of DEFENDANTS misclassifying their Drivers as "independent
10 contractors" and/or "franchisees," DEFENDANTS have willfully and knowingly failed to pay
11 premium overtime compensation to PLAINTIFFS and similarly situated Drivers for hours worked
12 in excess of eight hours per day and/or 40 hours per week.

13 30. As a result of DEFENDANTS' misclassifying their Drivers as "independent
14 contractors" and/or "franchisees," DEFENDANTS have failed to record the actual hours worked
15 by PLAINTIFFS and similarly situated Drivers during the Class Period.

16 31. As a result of DEFENDANTS' misclassifying their Drivers as "independent
17 contractors" and/or "franchisees," DEFENDANTS have failed to itemize the total hours worked on
18 wage statements furnished to PLAINTIFFS and similarly situated Drivers.

19 32. PLAINTIFFS are informed and on that basis allege that, as a result of
20 DEFENDANTS' misclassifying their Drivers as "independent contractors" and/or "franchisees,"
21 DEFENDANTS have not properly maintained payroll records showing the actual hours worked
22 each day by Drivers, including PLAINTIFFS.

23 33. As a result of DEFENDANTS misclassifying their Drivers as "independent
24 contractors" and/or "franchisees," DEFENDANTS have willfully and knowingly failed to pay
25 PLAINTIFFS and similarly situated Drivers, upon termination of employment, all accrued
26 compensation, including repayment of all unlawful deductions from wages, payment of missed
27 meal period compensation, and payment of minimum wage and overtime compensation.

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V. CLASS ACTION ALLEGATIONS

34. PLAINTIFFS bring this lawsuit as a class action pursuant to Cal. Code of Civil Procedure § 382 on behalf of themselves and all similarly situated Drivers. The Class PLAINTIFFS seek to represent is defined as:

All persons who are or have operated as airport shuttle drivers for DEFENDANTS in the State of California (referred to as "Drivers" or "Class Members") during the period commencing four years from the filing of this action through the entry of final judgment in this action.

The claims herein have been brought and may properly be maintained as a class action under Cal. Code of Civil Procedure § 382 because there is a well-defined community of interest among Class Members with respect to the claims asserted herein and the proposed Class is easily ascertainable:

a. Ascertainability and Numerosity: The potential members of the Class as defined herein are so numerous that joinder would be impracticable. PLAINTIFFS are informed and believe and on such information and belief allege that DEFENDANTS have employed several hundred Drivers in California during the Class Period. The names and addresses of the Class Members are available to the DEFENDANTS. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

b. Commonality: There are questions of law and fact common to PLAINTIFFS and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- i. Whether the Drivers have served DEFENDANTS as employees rather than independent contractors under California law;
- ii. Whether the Drivers have served DEFENDANTS as employees rather than franchisees under California law;
- iii. Whether the Drivers have necessarily incurred employment-related expenses and losses in carrying out their duties for DEFENDANTS;

- 1 iv. Whether DEFENDANTS have failed to indemnify Drivers for their
2 necessary employment-related expenses and losses in violation of
3 Cal. Labor Code § 2802;
4 v. Whether DEFENDANTS' failure to indemnify Drivers for their
5 necessary employment-related expenses and losses constitutes an
6 unlawful, unfair, and/or fraudulent business practice under Cal.
7 Business & Professions Code §17200, *et seq.*;
8 vi. Whether DEFENDANTS have made deductions from the
9 compensation paid to DRIVERS in violation of California law;
10 vii. Whether DEFENDANTS' deductions from Drivers' compensation
11 constitute an unlawful, unfair, and/or fraudulent business practice
12 under Cal. Business & Professions Code § 17200 *et seq.*;
13 viii. Whether DEFENDANTS have coerced or compelled Drivers to
14 patronize DEFENDANTS and/or other companies in the purchase or
15 lease of uniforms, communication equipment, electronic message
16 services, auto insurance, and other items in violation of Cal. Labor
17 Code § 450;
18 ix. Whether DEFENDANTS' coercion or compelling of Drivers to
19 patronize DEFENDANTS and/or other companies constitutes an
20 unlawful, unfair, and/or fraudulent business practice under Cal.
21 Business & Professions Code § 17200 *et seq.*;
22 x. Whether DEFENDANTS have failed to provide adequate off-duty
23 meal periods and compensation for missed meal periods in violation
24 of Cal. Labor Code §§ 226.7 and 512 and IWC wage order No. 9, §
25 11;
26 xi. Whether DEFENDANTS' failure to provide adequate off-duty meal
27 periods and meal period compensation constitutes an unlawful,
28

unfair, and/or fraudulent business practice under Cal. Business & Professions Code § 17200 *et seq.*;

xii. Whether DEFENDANTS have required, encouraged, or permitted Drivers to work in excess of 40 hours per week and/or eight hours per day;

xiii. Whether DEFENDANTS knew or should have known that its Drivers regularly worked over 40 hours per week and/or eight hours per day;

xiv. Whether DEFENDANTS have violated IWC wage order No. 9, § 4 and Cal. Labor Code §§ 1194 *et seq.* by their failure to pay Drivers minimum wage for all hours worked;

xv. Whether DEFENDANTS' failure to pay Drivers minimum wage for all hours worked constitutes an unlawful, unfair, and/or fraudulent business practice under Cal. Business & Professions Code § 17200 *et seq.*;

xvi. Whether DEFENDANTS have failed to pay its Drivers overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;

xvii. Whether DEFENDANTS have employed Drivers in a position subject to, and not exempt from, California's overtime pay and other wage and hour requirements;

xviii. Whether DEFENDANTS have violated IWC wage order No. 9, § 3 and Cal. Labor Code §§ 510 and 1194 by their failure to pay Drivers overtime compensation;

xix. Whether DEFENDANTS' failure to pay overtime compensation to Drivers constitutes an unlawful, unfair, and/or fraudulent business practice under Cal. Business & Professions Code § 17200 *et seq.*;

- 1 xx. Whether DEFENDANTS have knowingly and intentionally failed to
- 2 provide Drivers with an itemized statement showing total hours
- 3 worked with each payment of wages, as required by Cal. Labor Code
- 4 § 226 and IWC wage order No. 9, § 7;
- 5 xxi. Whether DEFENDANTS' failure to provide an itemized statement
- 6 showing total hours worked with each payment of wages constitutes
- 7 an unlawful, unfair, and/or fraudulent business practice under Cal.
- 8 Business & Professions Code § 17200 *et seq.*;
- 9 xxii. Whether DEFENDANTS have violated Cal. Labor Code § 1174 and
- 10 IWC wage order No. 9, § 7 by failing to maintain documentation of
- 11 the actual hours worked each day by Drivers;
- 12 xxiii. Whether DEFENDANTS' failure to maintain documentation of the
- 13 actual hours worked each day by Drivers constitutes an unlawful,
- 14 unfair, and/or fraudulent business practice under Cal. Business &
- 15 Professions Code § 17200 *et seq.*;
- 16 xxiv. Whether DEFENDANTS have violated Labor Code §§ 201-203 by
- 17 failing, upon termination, to timely pay Drivers wages that were due
- 18 for minimum wage, overtime, missed meal periods, and/or wrongful
- 19 deductions from wages;
- 20 xxv. Whether DEFENDANTS' failure to pay all compensation owed at
- 21 time of termination of employment constituted an unlawful, unfair,
- 22 and/or fraudulent business practice under Business & Professions
- 23 Code § 17200 *et seq.*; and
- 24 xxvi. The proper formula for calculating restitution, damages, and waiting
- 25 time and other statutory penalties owed to PLAINTIFFS and the
- 26 Class alleged herein.
- 27 c. Typicality: PLAINTIFFS' claims are typical of the claims of the Class.
- 28 DEFENDANTS' common course of unlawful conduct has caused PLAINTIFFS and similarly

1 situated Drivers to sustain the same or similar injuries and damages caused by the same practices of
 2 DEFENDANTS. PLAINTIFFS' claims are thereby representative of and co-extensive with the
 3 claims of the Class.

4 d. Adequacy of Representation: PLAINTIFFS are all members of the Class, do
 5 not have any conflicts of interest with other Class Members, and will prosecute the case vigorously
 6 on behalf of the Class. PLAINTIFFS will fairly and adequately represent and protect the interests
 7 of the Class Members. PLAINTIFFS' counsel are competent and experienced in litigating large
 8 employment class actions, including large wage and hour class actions.

9 e. Superiority of Class Action: A class action is superior to other available
 10 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
 11 Members is not practicable, and questions of law and fact common to the Class predominate over
 12 any questions affecting only individual members of the Class. Each Class Member has been
 13 damaged and is entitled to recovery by reason of DEFENDANTS' unlawful policies and/or
 14 practices described herein. Because the damages suffered by individual Class Members may be
 15 relatively small, albeit significant, the expense and burden of individual litigation make it
 16 impractical for most Class Members individually to seek redress for the wrongful conduct alleged.
 17 Class action treatment will allow those similarly situated persons to litigate their claims in the
 18 manner that is most efficient and economical for the parties and the judicial system.

19 VI. DAMAGES

20 35. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct,
 21 PLAINTIFFS and similarly situated Drivers are owed un-reimbursed business expenses plus
 22 interest, repayment of unlawfully deducted wages plus interest, minimum wage plus interest and
 23 liquidated damages, overtime compensation plus interest, meal period compensation plus interest,
 24 waiting time penalties under Cal. Labor Code § 203, other statutory penalties, and punitive
 25 damages, the precise amount of which will be proven at trial.

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1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
 3 **REIMBURSEMENT OF BUSINESS EXPENSES**
 4 **(CAL. LABOR CODE § 2802)**

5 36. The allegations of each of the preceding paragraphs are realleged and incorporated
 6 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
 7 and the above-described Class of similarly situated Drivers employed by DEFENDANTS in
 8 California.

9 37. While acting on the direct instruction of DEFENDANTS and discharging their
 10 duties for them, PLAINTIFFS and similarly situated Drivers have incurred work-related expenses.
 11 Such expenses include but are not limited to the purchase or lease of vehicles; fuel, maintenance,
 12 and other vehicle operating costs; SUPERSHUTTLE vehicle decals, other markings, and paint;
 13 various forms of insurance; communications equipment; electronic message service; and uniforms.
 14 PLAINTIFFS and Class Members incurred these substantial expenses and losses as a direct result
 15 of performing their job duties for DEFENDANTS.

16 38. DEFENDANTS have failed to indemnify or in any manner reimburse PLAINTIFFS
 17 and similarly situated Drivers for these expenditures and losses. By requiring those employees to
 18 pay expenses and cover losses that they incurred in direct consequence of the discharge of their
 19 duties for DEFENDANTS and/or in obedience of DEFENDANTS' direction, DEFENDANTS
 20 have violated and continue to violate Cal. Labor Code § 2802.

21 39. By unlawfully deducting wages and failing to pay PLAINTIFFS and other similarly
 22 situated Drivers, DEFENDANTS are also liable for reasonable attorneys' fees and costs under
 23 Labor Code §§ 218.5 and 2802(c).

24 40. As a direct and proximate result of DEFENDANTS' conduct, PLAINTIFFS and
 25 similarly situated Drivers have suffered substantial losses according to proof, as well as pre-
 26 judgment interest, costs, and attorneys' fees for the prosecution of this action.

27 41. DEFENDANTS' actions were willful, malicious, fraudulent and oppressive, and
 28 were committed with the wrongful intent to injure PLAINTIFFS and Class Members and in
 conscious disregard of their rights.

42. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

**SECOND CAUSE OF ACTION
UNLAWFUL DEDUCTIONS FROM WAGES
(CAL. LABOR CODE §§ 221, 223, 400-410, IWC. WAGE ORDER NO. 9)**

43. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described Class of similarly situated Drivers employed by DEFENDANTS in California.

44. Labor Code § 221 provides: "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

45. Labor Code § 223 provides: "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

46. Labor Code §§ 400-410 ("Employee Bond Law") provide the limited circumstances under which an employer can exact a cash bond from its employees. These provisions are designed to protect employees against the very real danger of an employer taking or misappropriating employee funds held by the employer in trust.

47. IWC wage order No. 9, § 8 provides that the only circumstance under which an employer can make a deduction from an employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

48. These and related statutes, along with California's fundamental public policy protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated or unpredicted reductions in their wages; making employees the insurers of their employer's business losses; otherwise passing the ordinary business losses of the employer onto the employee; or taking deductions from wages for business losses in any form unless the employer can establish that the loss was caused by a dishonest or willful act, or gross negligence of the employee.

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1 49. DEFENDANTS have violated Cal. Labor Code §§ 221, 223, and 400-410, and IWC
2 wage order No. 9, § 8 by unlawfully taking deductions from PLAINTIFFS' and Class Members'
3 compensation to cover certain ordinary business expenses of DEFENDANTS, including but not
4 limited to insurance, dispatch fees, PUCTRA business operating fees, franchise fees, and
5 equipment and uniform fees.

6 50. Because DEFENDANTS made unlawful deductions from Drivers' compensation,
7 they are liable to PLAINTIFFS and Class Members for the compensation that should have been
8 paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221, 223, and 400-410, and
9 IWC wage order No. 9, § 8.

10 51. By unlawfully deducting wages and failing to pay PLAINTIFFS and other similarly
11 situated Drivers, DEFENDANTS are also liable for reasonable attorneys' fees and costs under
12 Labor Code § 218.5.

13 52. DEFENDANTS' actions were willful, malicious, fraudulent and oppressive, and
14 were committed with the wrongful intent to injure PLAINTIFFS and Class Members and in
15 conscious disregard of their rights.

16 53. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief
17 as described below.

18 **THIRD CAUSE OF ACTION**
19 **COERCED PURCHASES**
 (CAL. LABOR CODE § 450 ET SEQ.)

20 54. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
22 and the above-described Class of similarly situated Drivers employed by DEFENDANTS in
23 California.

24 55. DEFENDANTS have compelled and/or coerced PLAINTIFFS and Class Members
25 to patronize DEFENDANTS by requiring PLAINTIFFS and Class Members to lease or purchase
26 certain items, including but not limited to data communication equipment and services, uniforms,
27 and other items directly from DEFENDANTS and/or other companies in violation of Cal. Labor
28 Code § 450.

**FIFTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ., IWC WAGE ORDER NO. 9, MINIMUM
WAGE ORDER)**

64. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described Class of similarly situated Drivers employed by DEFENDANTS in California.

65. At all times relevant to this complaint, Labor Code §§ 1182.11 and 1197, Wage Order 9-2001, and the Minimum Wage Order were in full force and effect and required that DEFENDANTS' nonexempt employees receive the minimum wage for all hours worked irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate \$6.75 per hour commencing January 1, 2002, \$7.50 per hour commencing January 1, 2007, and \$8.00 per hour commencing January 1, 2008.

66. At various times throughout the relevant statutory period, DEFENDANTS have caused PLAINTIFFS and Class Members to incur expenses and deductions that contributed to DEFENDANTS failing to pay minimum wages for all hours worked, as required by law.

67. As a direct and proximate result of the acts and/or omissions of DEFENDANTS PLAINTIFFS and Class Members have been deprived of minimum wages due in amounts to be determined at trial, and to additional amounts as liquidated damages, pursuant to Labor Code §§ 1194 and 1194.2.

68. By violating Cal Labor Code §§ 1182.11 and 1197, IWC wage order No. 9, § 4, and the Minimum Wage Order, DEFENDANTS are also liable for reasonable attorneys' fees and costs under Cal. Labor Code § 1194.

69. DEFENDANTS' actions were willful, malicious, fraudulent and oppressive, and were committed with the wrongful intent to injure PLAINTIFFS and Class Members and in conscious disregard of their rights.

70. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

SIXTH CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(CAL. LABOR CODE §§ 510, 1194 ET SEQ., IWC WAGE ORDER NO. 9.)

71. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described Class of similarly situated Drivers employed by DEFENDANTS in California.

72. By failing to pay overtime compensation to PLAINTIFFS and similarly situated Drivers as alleged above, DEFENDANTS have violated and continue to violate Cal. Labor Code § 510 and IWC wage order No. 9, § 3, which require overtime compensation for non-exempt employees.

73. By failing to maintain adequate time records as required by Cal. Labor Code § 1174(d) and IWC wage order No. 9, § 7(A), DEFENDANTS have made it difficult to calculate the overtime compensation due to PLAINTIFFS and similarly situated Drivers.

74. As a result of DEFENDANTS' unlawful acts, PLAINTIFFS and similarly situated Drivers have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor Code § 1194.

75. By violating Cal. Labor Code § 510, DEFENDANTS are liable for civil penalties and attorneys' fees and costs under Cal. Labor Code §§ 558, 1194 and 1197.1.

76. DEFENDANTS' actions were willful, malicious, fraudulent and oppressive, and were committed with the wrongful intent to injure PLAINTIFFS and Class Members and in conscious disregard of their rights.

77. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief as described below.

SEVENTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
(CAL. LABOR CODE §§ 226 & 226.3; IWC WAGE ORDER NO. 9)

78. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves

1 and the above-described Class of similarly situated Drivers employed by DEFENDANTS in
2 California.

3 79. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers
4 semi-monthly or at the time of each payment of wages to furnish each employee with a statement
5 itemizing, among other things, the total hours worked by the employee. Cal. Labor Code § 226(b)
6 provides that if an employer knowingly and intentionally fails to provide a statement itemizing,
7 among other things, the total hours worked by the employee, then the employee is entitled to
8 recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one
9 hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

10 80. DEFENDANTS knowingly and intentionally failed to furnish PLAINTIFFS and
11 similarly situated Drivers with timely, itemized statements showing the total hours worked, as
12 required by Cal. Labor Code § 226(a) and IWC wage order No 9, § 7(B). As a result,
13 DEFENDANTS are liable to PLAINTIFFS and similarly situated Drivers for the amounts provided
14 by Cal. Labor Code § 226(b).

15 81. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief
16 as described below.

17 **EIGHTH CAUSE OF ACTION**
18 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
(CAL. LABOR CODE §§ 1174 & 1174.5; IWC WAGE ORDER NO. 10)

19 82. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
21 and the above-described Class of similarly situated Drivers employed by DEFENDANTS in
22 California.

23 83. DEFENDANTS have violated Cal. Labor Code § 1174 and IWC wage order No. 9,
24 § 7(A) by willfully failing to keep required payroll records showing the actual hours worked each
25 day by PLAINTIFFS and similarly situated Drivers. As a direct and proximate result of
26 DEFENDANTS' failure to maintain payroll records, PLAINTIFFS and similarly situated Drivers
27 have suffered actual economic harm as they have been precluded from accurately monitoring the
28 number of hours worked and thus seeking all accrued overtime pay.

1 84. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief
2 as described below.

3 **NINTH CAUSE OF ACTION**
4 **WAITING TIME PENALTIES**
5 **(CAL. LABOR CODE §§ 201, 202 & 203)**

6 85. The allegations of each of the preceding paragraphs are recalled and incorporated
7 herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves
8 and the above-described Class of similarly situated Drivers employed by DEFENDANTS in
9 California.

10 86. Cal. Labor Code § 201 requires an employer who discharges an employee to pay all
11 compensation due and owing to that employee immediately upon discharge.

12 87. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing
13 to an employee who quits within 72 hours of that employee quitting, unless the employee provides
14 at least 72 hours notice of quitting, in which case all compensation is due at the end of the
15 employee's final day of work.

16 88. Cal. Labor Code § 203 provides that if an employer willfully fails to pay
17 compensation promptly upon discharge, as required by § 201 or § 202, then the employer is liable
18 for waiting time penalties in the form of continued compensation of up to 30 work days.

19 89. DEFENDANTS willfully failed and refused to timely pay compensation and wages,
20 including unpaid meal period compensation, unpaid minimum wage pay, unpaid overtime pay and
21 sums wrongfully deducted from compensation, to PLAINTIFFS and similarly situated Drivers
22 whose employment terminated. As a result, DEFENDANTS are liable to PLAINTIFFS and
23 similarly situated Drivers for waiting time penalties, together with interest thereon and reasonable
24 attorneys' fees and costs, under Cal. Labor Code §§ 203 and 256.

25 90. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief
26 as described below.

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TENTH CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)
(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-09)

91. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and PLAINTIFFS allege as follows a cause of action on behalf of themselves and the above-described Class of similarly situated Drivers and in a representative capacity under Cal. Business and Professions Code § 17204.

92. Cal. Business & Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

93. Cal. Business & Professions Code § 17204 allows "any person acting for the interests of itself, its members or the general public" to prosecute a civil action for violation of the UCL.

94. Beginning at an exact date unknown to PLAINTIFFS, but at least four years prior to the filing of this action, DEFENDANTS have improperly, fraudulently, and unlawfully classified its Drivers as "independent contractors" and have thereby committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Cal. Business & Professions Code § 17200, by engaging in the following:

- a. failing to indemnify PLAINTIFFS and similarly situated Drivers for employment-related business expenses and losses;
- b. improperly and unlawfully making deductions from Drivers' compensation because of cash shortages, breakage, equipment loss, and other work-related expenses and losses not attributable to the Drivers' dishonest or willful act, or to the gross negligence of the Drivers, as described above;
- c. failing and refusing to provide meal periods to PLAINTIFFS and similarly situated Drivers;
- d. unlawfully deducting money from wages owed to PLAINTIFFS and similarly situated Drivers;
- e. coercing or compelling PLAINTIFFS and similarly situated Drivers to patronize DEFENDANTS and allied companies;

1 f. failing to pay minimum wage and overtime compensation to PLAINTIFFS
2 and similarly situated Drivers;

3 g. failing to provide accurate itemized wage statements to PLAINTIFFS and
4 similarly situated Drivers;

5 h. failing to maintain payroll records showing the actual hours worked each
6 day by PLAINTIFFS and similarly situated Drivers;

7 i. failing to pay all accrued minimum wage, overtime and meal period
8 compensation and failing to repay unlawfully deducted commissions to Drivers upon termination
9 of their employment; and

10 j. by intentionally, recklessly and/or negligently misrepresenting to
11 PLAINTIFFS and similarly situated Drivers the true nature of their employment status.

12 The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and
13 practices for purposes of Cal. Business and Professions Code § 17200.

14 95. As a direct and proximate result of DEFENDANTS' unlawful, unfair, and/or
15 fraudulent acts and practices described herein, DEFENDANTS have received and continue to hold
16 ill-gotten gains belonging to PLAINTIFFS and Class Members. As a direct and proximate result of
17 DEFENDANTS' unlawful business practices, PLAINTIFFS and Class Members have suffered
18 economic injuries including, but not limited to out-of-pocket business expenses, unlawful
19 deductions from compensation, loss of minimum wage and overtime wages, compensation for
20 missed meal periods, and waiting time penalties. DEFENDANTS have profited from its unlawful,
21 unfair, and/or fraudulent acts and practices in the amount of those business expenses, improper
22 deductions from compensation, unpaid minimum wage and overtime, unpaid compensation for
23 missed meal periods, and interest accrued by PLAINTIFFS and similarly situated Drivers.

24 96. PLAINTIFFS and similarly situated Drivers are entitled to restitution pursuant to
25 Cal. Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful
26 deductions from compensation, minimum wage, overtime, meal period compensation, and interest
27 since four years prior to the filing of this action.

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1 97. PLAINTIFFS and similarly situated Drivers are entitled to enforce all applicable
2 penalty provisions of the Cal. Labor Code pursuant to Cal. Business & Professions Code § 17202.

3 98. PLAINTIFFS' success in this action will enforce important rights affecting the
4 public interest. In this regard, PLAINTIFFS sue on behalf of the public as well as on behalf of
5 themselves and others similarly situated. PLAINTIFFS seek and are entitled to reimbursement of
6 business expenses, the unpaid compensation, declaratory and injunctive relief, civil penalties, and
7 any other appropriate remedy.

8 99. Injunctive relief is necessary and appropriate to prevent DEFENDANTS from
9 continuing and repeating its unlawful, unfair and fraudulent business acts and practices alleged
10 above.

11 100. In order to prevent DEFENDANTS from profiting and benefiting from their
12 wrongful and illegal acts and continuing those acts, an order requiring DEFENDANTS to disgorge
13 all the profits and gains they have reaped and restore such profits and gains to Drivers, from whom
14 they were unlawfully taken.

15 101. PLAINTIFFS have assumed the responsibility of enforcement of the laws and
16 lawful claims specified herein. There is a financial burden incurred in pursuing this action which is
17 in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code
18 of Civil Procedure § 1021.5.

19 102. By all of the foregoing alleged conduct, DEFENDANTS have committed, and are
20 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
21 meaning of Cal. Business & Professions Code § 17200 *et seq.*

22 103. As a direct and proximate result of the unfair business practices described above,
23 PLAINTIFFS, other Drivers, and members of the general public have all suffered significant losses
24 and Defendants have been unjustly enriched.

25 104. Pursuant to Cal. Business & Prof. Code § 17203, PLAINTIFFS, other Drivers, and
26 member of the general public are entitled to: (a) restitution of money acquired by DEFENDANTS
27 by means of their unfair business practices, in amounts not yet ascertained but to be ascertained at
28 trial; (b) injunctive relief against DEFENDANTS' continuation of their unfair business practices;

1 and (c) a declaration that DEFENDANTS' business practices are unfair within the meaning of the
2 statute.

3 105. PLAINTIFFS, on behalf of themselves and similarly situated Drivers, request relief
4 as described below.

5 **VIII. REQUEST FOR JURY TRIAL**

6 106. PLAINTIFFS request a trial by jury on behalf of themselves and the above
7 described Class of similarly situated Drivers.

8 **IX. PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS Kairy, Brown, Dickson, and Osmun, on behalf of themselves
10 and the above-described Class of similarly situated Drivers, request relief as follows:

11 A. Certification of the above-described Class as a class action, pursuant to Code of
12 Civil Procedure § 382;

13 B. Certification of the above-described Class as a representative class under Business
14 and Professions Code § 17200.

15 C. Provision of class notice to all Drivers who worked for DEFENDANTS in
16 California during the Class Period described above;

17 D. A declaratory judgment that DEFENDANTS have knowingly and intentionally
18 violated the following provisions of law:

19 1. Cal. Labor Code § 2802 by failing to indemnify PLAINTIFFS and the Class
20 for all necessary business expenses and losses;

21 2. Cal. Labor Code §§ 221 and 400-410 and IWC wage order No. 9, by making
22 unlawful deductions from the compensation paid to PLAINTIFFS and the Class for ordinary
23 business expenses and losses without a showing that the expenses and/or losses were due to the
24 Drivers' dishonest or willful act, or to the gross negligence of the Drivers;

25 3. Cal. Labor Code § 450 by coercing or compelling PLAINTIFFS and the
26 Class to purchase or lease certain items and services;

27 4. Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9 by failure to
28 provide off-duty meal periods to PLAINTIFFS and the Class;

1 5. Cal. Labor Code §§ 1182.11, 1194 *et seq.*, IWC wage order No. 9, and the
2 Minimum Wage Order by failure to pay minimum wage to Drivers;

3 6. Cal. Labor Code §§ 510, 1194 *et seq.* and IWC wage order No. 9 by failure
4 to pay overtime compensation to Drivers;

5 7. Cal. Labor Code § 226 and IWC wage order No. 9, § 7(B), by failing to
6 provide Drivers with itemized statements of total hours worked with each payment of wages;

7 8. Cal. Labor Code § 1174 and IWC wage order No. 9, § 7(A), by failing to
8 maintain payroll records of the actual hours worked each day by Drivers;

9 9. Cal. Labor Code §§ 201-203, for willful failure to pay minimum wage,
10 overtime and meal period compensation and failure to repay unlawfully deducted wages at the time
11 of termination of employment, resulting in unpaid waiting time penalties; and

12 10. Cal. Business and Professions Code §§ 17200-17208, by failing to reimburse
13 Drivers for necessary business expenses, by requiring Drivers to indemnify DEFENDANTS for
14 ordinary business losses, by coercing or compelling Drivers to purchase or lease certain items and
15 services from DEFENDANTS or affiliated companies, by failing to provide off-duty meal periods
16 and/or pay meal period compensation to Drivers, by failing to pay its Drivers minimum wage and
17 overtime compensation, by failing to provide Drivers with itemized wage statements showing all
18 hours worked, by failing to maintain payroll records that document all hours worked by Drivers,
19 and by willfully failing to pay all compensation owed to Drivers upon termination of employment;

20 E. A declaratory judgment that DEFENDANTS' violations as described above were
21 willful;

22 F. An equitable accounting to identify, locate, and restore to all current and former
23 Drivers the wages that are due;

24 G. An award to PLAINTIFFS and the Class Members of damages in the amount of
25 necessary business expenses, unpaid minimum wage and overtime, meal period compensation and
26 amounts unlawfully deducted from wages, including interest thereon, subject to proof at trial;

27 ///

28 ///

1 H. An award to PLAINTIFFS and the Class Members of statutory penalties because of
2 DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with itemized wage
3 statements that comply with the requirements of Cal. Labor Code § 226, subject to proof at trial;

4 I. An award to PLAINTIFFS and the Class Members of liquidated damages
5 because of DEFENDANTS' failure to pay PLAINTIFFS and the Class Members minimum wage;

6 J. An award of payments due to them as waiting time penalties as to those Class
7 Members who have left DEFENDANTS' employ, pursuant to Labor Code § 203;

8 K. An order requiring DEFENDANTS to reclassify their Drivers as employees with
9 immediate reinstatement of all statutory and common law rights afforded employees in California,
10 including but not limited to reimbursement of necessary business expenses, payment of required
11 minimum wage and overtime compensation, the provision of proper meal periods, and ceasing the
12 policies and practices of deducting amount from wages and coercing purchases.

13 L. An order requiring DEFENDANTS to pay restitution of all amounts owed to
14 PLAINTIFFS and similarly situated Drivers for DEFENDANTS' failure to pay legally required
15 minimum wage, overtime and meal period pay, and interest thereon and DEFENDANTS' failure to
16 repay out-of-pocket business expenses incurred and amounts unlawfully deducted, and interest
17 thereon, in an amount according to proof, pursuant to Business & Professions Code § 17203;

18 M. An award to PLAINTIFFS and the Class Members of reasonable attorneys' fees and
19 costs, pursuant to Cal. Code of Civil Procedure § 1021.5 and Cal. Labor Code §§ 218.5, 226, 1194,
20 and 2802 and/or other applicable law; and

21 N. An award to PLAINTIFFS and the Class Members of such other and further relief
22 as this Court deems just and proper.

23 DATED: May 8, 2008

24 HINTON, ALFERT & SUMNER

25
26 By: 

27 AARON KAUFMANN
28 Attorneys for PLAINTIFFS

EXHIBIT B

1 Paul Marron, Esq., State Bar No. 128245
 2 Andre Y. Bates, Esq., State Bar No. 178170
 3 George E. Weber, Esq., State Bar No. 220592
 MARRON & ASSOCIATES
 4 111 W. Ocean Blvd.
 Suite 1925
 5 Long Beach, CA 90802
 (562) 432-7422

6 Attorneys for Defendants SuperShuttle
 International, Inc., SuperShuttle Franchise
 Corporation, and Veolia Transportation
 7 Services, Inc.

ENDORSED

JUN 17 2008

CLERK OF THE SUPERIOR COURT
 BY: ELEANOR COHEN, Deputy

8
 9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF ALAMEDA

11 ROOSEVELT KAIRY, LARRY BROWN,
 12 WAYNE DICKSON, AND DRAKE OSMUN,
 13 on behalf of themselves, all other similarly
 situated, and the general public,

14 Plaintiffs,

15 vs.

16 SUPERSHUTTLE INTERNATIONAL, INC.;
 17 SUPERSHUTTLE FRANCHISE
 CORPORATION, AND VEOLIA
 18 TRANSPORTATION SERVICES, INC., DBA
 19 SUPERSHUTTLE, and DOES 1 through 20,
 inclusive,

20 Defendants.

Case No.: RGO8386463

ANSWER OF DEFENDANTS
 SUPERSHUTTLE INTERNATIONAL,
 INC. AND SUPERSHUTTLE
 FRANCHISE CORPORATION TO
 PLAINTIFFS' UNVERIFIED
 COMPLAINT

Action Filed: May 8, 2008

21
 22
 23 Defendants SuperShuttle International, Inc. and SuperShuttle Franchise Corporation
 24 (collectively "Defendants") hereby answer the unverified Complaint of Plaintiffs Roosevelt Kairy,
 25 Larry Brown, Wayne Dickson and Drake Osmun, ("Plaintiffs") as follows:
 26

27 1

28 SUPERSHUTTLE INTERNATIONAL AND SUPERSHUTTLE FRANCHISE
 CORPORATION'S ANSWER TO PLAINTIFFS' COMPLAINT

Pursuant to California *Code of Civil Procedure* Section 431.30(d), Defendants generally and specifically deny each and every allegation contained in the Complaint and also deny that Plaintiffs, or any putative member of the purported class set forth in the Complaint, were damaged in the sums alleged or in any sum at all. Defendants further specifically deny that any of the claims alleged by Plaintiffs in the Complaint may be properly adjudicated on a class-action basis.

AS A SEPARATE AND DISTINCT ANSWER TO THE COMPLAINT AND TO EACH AND EVERY CAUSE OF ACTION THEREOF, DEFENDANTS ALLEGE:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The complaint and each and every cause of action set forth therein fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Independent Contractor Status)

Plaintiffs' complaint and each cause of action therein are barred because Plaintiffs are/were independent contractors, and not employees of Defendants.

THIRD AFFIRMATIVE DEFENSE

(Franchisee Status)

Plaintiffs' complaint and each cause of action therein are barred because Plaintiffs are/were franchisees, and not employees of Defendants.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' complaint and each cause of action therein is barred by the applicable statute of limitations, including without limitation, those contained in *California Code of Civil Procedure*

///

1 Sections 338 and 340, *California Labor Code* Section 203 and *California Business and*
2 *Professions Code* Section 17208.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(No Class Action)**

5 Plaintiffs' complaint and each cause of action therein cannot and should not be maintained
6 on a class action basis because those causes of action, and each of them, fail to meet the necessary
7 requirements for class certification, including class ascertainability, typicality, commonality,
8 numerosity, superiority and adequacy of the class representatives.

9 Plaintiffs' complaint and each cause of action therein, or some of them, are also barred by
10 waiver of class action adjudication for said claims.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Unconstitutional Class Action)**

13 Certification of a class action under the circumstances of this case would violate
14 Defendants' rights under the United States Constitution and the California Constitution.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(No Standing to Sue)**

17 Plaintiffs' complaint and each cause of action therein, or some of them, are bared in whole
18 or in part because Plaintiffs, or some of them, lack standing to sue.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Preemption)**

21 Plaintiffs' complaint and each cause of action therein, or some of them, are preempted, in whole or
22 in part, by federal law, and the federal regulation of interstate commerce in general and the
23 transportation industry in particular.

24 ///

25 ///

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs are barred from the relief sought in the complaint by Plaintiffs' unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

By Plaintiffs' own acts, Plaintiffs are estopped from seeking the relief claimed in the complaint, and each cause of action therein.

ELEVENTH AFFIRMATIVE DEFENSE

(Res Judicata and Collateral Estoppel)

Plaintiffs' complaint and each cause of action therein are barred by the doctrines of res judicata and collateral estoppel.

TWELFTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

Injunctive relief is barred because Plaintiffs have an adequate remedy at law and/or other requirements for granting injunctive relief cannot be satisfied.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

By Plaintiffs' own acts, Plaintiffs have waived the rights asserted in the complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(Release)

Plaintiffs' complaint and each cause of action therein, or some of them, are barred in whole or in part because said causes of action have been released by the individuals in question.

///

///

FIFTEENTH AFFIRMATIVE DEFENSE

(Privilege)

Plaintiffs' complaint and each cause of action therein, or some of them, are barred in whole or in part because Defendants were and are privileged to engage in the conduct alleged in the complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Arbitration)

Plaintiffs' complaint and each cause of action therein, or some of them, may not be litigated in court because some or all of said individuals' causes of action are subject to individual mandatory, final and binding arbitration.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Offset)

Plaintiffs' damages, if any, are offset in whole or in part by amounts owing to and damages suffered by Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs are barred by the doctrine of laches from pursuing any of the remedies sought in the complaint.

NINETEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiffs failed to take reasonable steps to mitigate the damages they allegedly suffered as a result of the actions alleged in the complaint, and any award against Defendants must be reduced by the amount of alleged damages Plaintiffs could have avoided had they taken reasonable steps to mitigate their damages.

///

///

TWENTIETH AFFIRMATIVE DEFENSE

(Conduct Reasonable and in Good Faith/Not Wilful)

Plaintiffs' complaint and each cause of action therein, or some of them, are barred in whole or in part, on the ground that Defendants acted in good faith, and in conformity with, and in reliance on, written administrative regulations, orders, rulings, guidelines, approvals and/or interpretations of federal and/or California agencies, and on the basis of a good faith and reasonable belief to have complied fully with federal and California law.

WHEREFORE, Defendants prays for judgment as follows:

1. That the Complaint and each cause of action therein be dismissed with prejudice;
1. That Plaintiffs take nothing by way of its unverified complaint herein;
2. That Defendants' reasonable attorneys' fees and cost of suit herein be awarded; and
3. For such other and further relief as the Court may deem proper.

Dated: June 17, 2008

MARRON & ASSOCIATES

By: 

Paul Marron, Esq.

Andre Y. Bates, Esq.

George E. Weber, Esq.

Attorneys for Defendants SuperShuttle International, Inc., SuperShuttle Franchise Corporation, and Veolia Transportation Services, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 111 West Ocean Blvd., Suite #1925, Long Beach, California 90802

On June 17, 2008 I served the foregoing DOCUMENT described as **ANSWER OF DEFENDANTS SUPERSHUTTLE INTERNATIONAL, INC. AND SUPERSHUTTLE FRANCHISE CORPORATION TO PLAINTIFFS' UNVERIFIED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. Postal Service on the same day with postage thereon fully prepared at Long Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid of postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ PERSONALLY

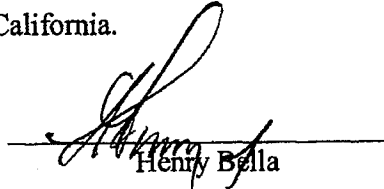
I caused the above described document(s) to be personally served to the addressees on the attached mailing list.

☐ BY FACSIMILE

At the time of transmission I was at least 18 years of age and not a party to this legal proceeding. On _____, at approximately _____ .m., I transmitted to the parties on the attached service list the following documents described above, by facsimile machine, pursuant to rule 2006. The facsimile machine I used complied with rule 2003(3) and no error was reported by the machine. Pursuant to rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 17, 2008 at Long Beach, California.


Henry Bella

SERVICE LIST

Aaron Kaufmann, Esq.
David Progrell, Esq.
Hinton, Alfert & Sumner
1646 N. California Blvd., Suite 600
Walnut Creek, CA 94596
[Attorneys for Plaintiffs]

Philip Monrad, Esq.
Beth Ross, Esq.
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1330 Broadway, Suite 1450
Oakland, CA 94612
[Attorneys for Plaintiffs]

Daniel Feinberg, Esq.
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[Attorneys for Plaintiffs]

Peter Rukin, Esq.
Rukin Hyland Doria & Tindall LLP
100 Pine Street, Suite 725
San Francisco, CA 94111
[Attorneys for Plaintiffs]

EXHIBIT C

1 Paul Marron, Esq., State Bar No. 128245
 2 Andre Y. Bates, Esq., State Bar No. 178170
 3 George E. Weber, Esq., State Bar No. 220592
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 4 111 W. Ocean Blvd.
 Suite 1925
 Long Beach, CA 90802
 (562) 432-7422

5 Attorneys for Defendants SuperShuttle
 6 International, Inc., SuperShuttle Franchise
 Corporation, and Veolia Transportation
 7 Services, Inc.

FILED
 JUN 17 2008
 CLERK OF THE COURT
 by Esther Coleman, Deputy

8
 9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF ALAMEDA

11 ROOSEVELT KAIRY, LARRY BROWN,
 12 WAYNE DICKSON, AND DRAKE OSMUN,
 13 on behalf of themselves, all other similarly
 situated, and the general public,

14 Plaintiffs,

15 vs.

16 SUPERSHUTTLE INTERNATIONAL, INC.;
 17 SUPERSHUTTLE FRANCHISE
 CORPORATION, AND VEOLIA
 18 TRANSPORTATION SERVICES, INC., DBA
 19 SUPERSHUTTLE, and DOES 1 through 20,
 inclusive,

20 Defendants.
 21

Case No.: RGO8386463

ANSWER OF DEFENDANT VEOLIA
 TRANSPORTATION SERVICES, INC.
 TO PLAINTIFFS' UNVERIFIED
 COMPLAINT

Action Filed: May 8, 2008

22
 23 Defendant Veolia Transportation Services, Inc. ("Defendant") hereby answers the
 24 unverified Complaint of Plaintiffs Roosevelt Kairy, Larry Brown, Wayne Dickson and Drake
 25 Osmun, ("Plaintiffs") as follows:

26 Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant generally
 27
 28

1

VEOLIA TRANSPORTATION SERVICES INC.'S ANSWER TO PLAINTIFFS' COMPLAINT

03922/2007-1060.080

COPY

FILE BY FAX

1 and specifically denies each and every allegation contained in the Complaint and also denies that
 2 Plaintiffs, or any putative member of the purported class set forth in the Complaint, were damaged
 3 in the sums alleged or in any sum at all. Defendant further specifically denies that any of the
 4 claims alleged by Plaintiffs in the Complaint may be properly adjudicated on a class-action basis.

5 AS A SEPARATE AND DISTINCT ANSWER TO THE COMPLAINT AND TO EACH
 6 AND EVERY CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Cause of Action)**

9 The complaint and each and every cause of action set forth therein fails to state facts
 10 sufficient to constitute a cause of action.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Independent Contractor Status)**

13 Plaintiffs' complaint and each cause of action therein are barred because Plaintiffs are/were
 14 independent contractors, and not employees of Defendant.

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Franchisee Status)**

17 Plaintiffs' complaint and each cause of action therein are barred because Plaintiffs are/were
 18 franchisees, and not employees of Defendant.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 **(Statute of Limitations)**

21 Plaintiffs' complaint and each cause of action therein is barred by the applicable statute of
 22 limitations, including without limitation, those contained in *California Code of Civil Procedure*
 23 Sections 338 and 340, *California Labor Code* Section 203 and *California Business and*
 24 *Professions Code* Section 17208.

25 ///

FIFTH AFFIRMATIVE DEFENSE

(No Class Action)

Plaintiffs' complaint and each cause of action therein cannot and should not be maintained on a class action basis because those causes of action, and each of them, fail to meet the necessary requirements for class certification, including class ascertainability, typicality, commonality, numerosity, superiority and adequacy of the class representatives.

Plaintiffs' complaint and each cause of action therein, or some of them, are also barred by waiver of class action adjudication for said claims.

SIXTH AFFIRMATIVE DEFENSE

(Unconstitutional Class Action)

Certification of a class action under the circumstances of this case would violate Defendant's rights under the United States Constitution and the California Constitution.

SEVENTH AFFIRMATIVE DEFENSE

(No Standing to Sue)

Plaintiffs' complaint and each cause of action therein, or some of them, are bared in whole or in part because Plaintiffs, or some of them, lack standing to sue.

EIGHTH AFFIRMATIVE DEFENSE

(Preemption)

Plaintiffs' complaint and each cause of action therein, or some of them, are preempted, in whole or in part, by federal law, and the federal regulation of interstate commerce in general and the transportation industry in particular.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs are barred from the relief sought in the complaint by Plaintiffs' unclean hands.

///

///

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

By Plaintiffs' own acts, Plaintiffs are estopped from seeking the relief claimed in the complaint, and each cause of action therein.

ELEVENTH AFFIRMATIVE DEFENSE

(Res Judicata and Collateral Estoppel)

Plaintiffs' complaint and each cause of action therein are barred by the doctrines of res judicata and collateral estoppel.

TWELFTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

Injunctive relief is barred because Plaintiffs have an adequate remedy at law and/or other requirements for granting injunctive relief cannot be satisfied.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

By Plaintiffs' own acts, Plaintiffs have waived the rights asserted in the complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(Release)

Plaintiffs' complaint and each cause of action therein, or some of them, are barred in whole or in part because said causes of action have been released by the individuals in question.

FIFTEENTH AFFIRMATIVE DEFENSE

(Privilege)

Plaintiffs' complaint and each cause of action therein, or some of them, are barred in whole or in part because Defendant was and is privileged to engage in the conduct alleged in the complaint.

///

///

SIXTEENTH AFFIRMATIVE DEFENSE

(Arbitration)

Plaintiffs' complaint and each cause of action therein, or some of them, may not be litigated in court because some or all of said individuals' causes of action are subject to individual mandatory, final and binding arbitration.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Offset)

Plaintiffs' damages, if any, are offset in whole or in part by amounts owing to and damages suffered by Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs are barred by the doctrine of laches from pursuing any of the remedies sought in the complaint.

NINETEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiffs failed to take reasonable steps to mitigate the damages they allegedly suffered as a result of the actions alleged in the complaint, and any award against Defendant must be reduced by the amount of alleged damages Plaintiffs could have avoided had they taken reasonable steps to mitigate their damages.

TWENTIETH AFFIRMATIVE DEFENSE

(Conduct Reasonable and in Good Faith/Not Wilful)

Plaintiffs' complaint and each cause of action therein, or some of them, are barred in whole or in part, on the ground that Defendant acted in good faith, and in conformity with, and in reliance on, written administrative regulations, orders, rulings, guidelines, approvals and/or interpretations of federal and/or California agencies, and on the basis of a good faith and reasonable belief to have complied fully with federal and California law.

1 WHEREFORE, Defendant prays for judgment as follows:

- 2 1. That the Complaint and each cause of action therein be dismissed with prejudice;
- 3 2. That Plaintiffs take nothing by way of their unverified complaint herein;
- 4 1. That Defendant's reasonable attorneys' fees and cost of suit herein be awarded; and
- 5 2. For such other and further relief as the Court may deem proper.
- 6

7 Dated: June 17, 2008

MARRON & ASSOCIATES

8 By: 

9 Paul Marron, Esq.

10 Andre Y. Bates, Esq.

11 George E. Weber, Esq.

12 Attorneys for Defendants SuperShuttle
13 International, Inc., SuperShuttle Franchise
14 Corporation, and Veolia Transportation
15 Services, Inc.

16

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 111 West Ocean Blvd., Suite #1925, Long Beach, California 90802

On June 17, 2008 I served the foregoing DOCUMENT described as **ANSWER OF DEFENDANT VEOLIA TRANSPORTATION SERVICES, INC. TO PLAINTIFFS' UNVERIFIED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST**[X] BY MAIL**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. Postal Service on the same day with postage thereon fully prepared at Long Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid of postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] PERSONALLY

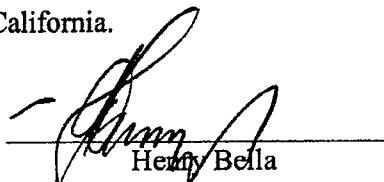
I caused the above described document(s) to be personally served to the addressees on the attached mailing list.

[] BY FACSIMILE

At the time of transmission I was at least 18 years of age and not a party to this legal proceeding. On _____, at approximately _____ .m., I transmitted to the parties on the attached service list the following documents described above, by facsimile machine, pursuant to rule 2006. The facsimile machine I used complied with rule 2003(3) and no error was reported by the machine. Pursuant to rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 17, 2008 at Long Beach, California.



Henry Bella

SERVICE LIST

Aaron Kaufmann, Esq.
David Progrell, Esq.
Hinton, Alfert & Sumner
1646 N. California Blvd., Suite 600
Walnut Creek, CA 94596
[Attorneys for Plaintiffs]

Philip Monrad, Esq.
Beth Ross, Esq.
Leonard Carder, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
[Attorneys for Plaintiffs]

Daniel Feinberg, Esq.
Kirsten Scott, Esq.
Lewis, Feinberg, Lee, Renaker & Jackson, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612
[Attorneys for Plaintiffs]

Peter Rukin, Esq.
Rukin Hyland Doria & Tindall LLP
100 Pine Street, Suite 725
San Francisco, CA 94111
[Attorneys for Plaintiffs]

EXHIBIT D

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) AARON KAUFMANN 148580/DAVID POGREL 203787 HINTON ALFERT & SUMNER 1646 N. CALIFORNIA BLVD. SUITE 600 WALNUT CREEK, CALIFORNIA 94596 TELEPHONE NO 925.932.6006 FAX NO 925.932.3412 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY FILED ALAMEDA COUNTY MAY - 8 2008 CLERK OF THE SUPERIOR COURT By Aphonstine Oates, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME		
CASE NAME		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: RG08386463 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3 740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re. arbitration award (11) <input type="checkbox"/> Writ of mandale (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 10; See Attachment 4.
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date:

AARON KAUFMANN 148580/DAVID POGREL 203787

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

MC-025

SHORT TITLE: Kairy, et al. v. SuperShuttle International, Inc., et al.

CASE NUMBER

ATTACHMENT (Number): 4.

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(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

CAUSES OF ACTION

- (1) REIMBURSEMENT OF BUSINESS EXPENSES (Labor Code §2802);
- (2) UNLAWFUL DEDUCTIONS FROM WAGES (Labor Code §§221, 223, 400-410);
- (3) COERCED PURCHASES (Labor Code §450);
- (4) FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§226.7, 512);
- (5) FAILURE TO PAY MINIMUM WAGE (Labor Code §§1182.11, 1194, 1197);
- (6) FAILURE TO PAY OVERTIME COMPENSATION (Labor Code §§510, 1194);
- (7) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS (Labor Code §§226, 226.3);
- (8) FAILURE TO KEEP ACCURATE PAYROLL RECORDS (Labor Code §§1174, 1174.5);
- (9) WAITING TIME PENALTIES (Labor Code §201-203); and
- (10) VIOLATIONS OF UCL (Business and Professions Code §17200 et seq)

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

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[Hinton, Alfert & Sumner Attn: Kaufmann, Aaron 1646 North California Blvd. Suite 600 L Walnut Creek, CA 94596-4113]	[Supershuttle International, Inc.]
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**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

Kairy Plaintiff/Petitioner(s) VS. Supershuttle International, Inc. Defendant/Respondent(s) (Abbreviated Title)	
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No. RG08386463

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 07/11/2008 TIME: 11:00 AM DEPARTMENT: 20
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:
DATE: 08/15/2008 TIME: 11:00 AM DEPARTMENT: 20
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 4.2 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 20 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6936. Please consult Appendix E to Local Rules 4 and 5 of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 20.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 20.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 20 by e-mail at Dept.20@alameda.courts.ca.gov or by phone at (510) 267-6936.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 05/12/2008

Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 05/12/2008.

By



Deputy Clerk